

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DON RUTLEDGE DAY and RABINDRANATH DUTTA

MAILED

SEP 28 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2005-2172
Application No. 09/703,349

ON BRIEF

Before GROSS, BARRY, and BLANKENSHIP, *Administrative Patent Judges*.
GROSS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2, 3, 5, and 6, which are all of the claims pending in this application.

Appellants' invention relates to a method and system for communicating an actual gesture of an individual by analyzing a viewed gesture, associating it with a command of an application program interface, and transmitting the command. For example, if the individual smiled, the movements of the mouth would be analyzed, associated with the command "smile," and either a smile emoticon or the word smile would be inserted into the text being

transmitted by the individual. Claim 3 is illustrative of the claimed invention, and it reads as follows:

3. A method for communicating between participants through a network of computers, comprising:

analyzing images of at least one of the participants received as input for an actual physical gesture;

associating each of a plurality of physical gestures to separate commands of an application program interface for communicating in real time between the participants; and

transmitting an associated command associated with the actual physical gesture from the analyzed images to the application program interface to send a representation of the actual physical gesture within the real time communication for communicating between the participants.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hattlelid et al. (Hattlelid)	6,404,438	Jun. 11, 2002 (filed Dec. 21, 1999)
Kellner	6,539,099	Mar. 25, 2003 (filed Aug. 30, 1999)

Claim 3 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Kellner.

Claims 2, 5, and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kellner in view of Hattlelid.

Reference is made to the Examiner's Answer (mailed October 4, 2004) for the examiner's complete reasoning in support of the rejections, and to appellants' Brief (Paper No. 12, filed July 20, 2004) for appellants' arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by appellants and the examiner. As a consequence of our review, we will reverse the anticipation rejection of claim 3 and the obviousness rejection of claims 2, 5, and 6.

The examiner contends (Answer, pages 3-4) that Kellner discloses capturing gestures such as blinking, talking, or smiling, which "inherently requires that separate information, i.e. data, which acts as an instruction or command, to the algorithms for instructing them how to manipulate the image based upon the received input." In other words, the examiner equates image data with the claimed commands.

Appellants argue (Brief, page 6) that Kellner fails to teach "associating each of a plurality of gestures to **separate commands** of an application program interface" and "transmitting **an associated command associated with the actual physical gesture.**" Appellants state (Brief, page 6) that Kellner transmits data, not commands. According to appellants, "Kellner merely processes data from the video image; a given physical gesture is not being associated with a separate command."

We agree with appellants. In Kellner, the video image is analyzed, and image data is transmitted. No association occurs. There is no association of individual gestures with "commands of an application program interface," as recited in the claims. Accordingly, Kellner also fails to disclose transmitting the associated commands. As Kellner fails to disclose each and every element of the claim, we cannot sustain the anticipation rejection of claim 3.

Regarding the obviousness rejection of claims 2, 5, and 6, independent claims 2 and 5 require determining "a state of the actual physical gesture," accessing a table or mapping "for an action associated with the determined state ," and "automatically generating a command for the action . . . thereby sending a representation of the actual physical gesture." The examiner maintains (Answer, page 5) that Kellner teaches the claimed commands, but admits (Answer, page 6) that Kellner fails to teach the steps of determining the state of the gesture and accessing a table for an action associated with the state. The examiner, however, contends (Answer, page 6) that Hatlelid discloses the claimed steps. Specifically, the examiner states (Answer, page 6) that:

State of a gesture refers to the mood/personality and intensity linked to a behavioral movement. For

example, several behavioral movements can be associated with "Hello" in the library and, based upon the state of the gesture, will either animate the character to perform a small handshake or a big wave.

Appellants argue (Brief, page 7) that neither Kellner nor Hatlelid teaches or suggests the claimed step of "automatically generating a command for the action to a software program." Kellner transmits data, not commands. Further, as indicated by appellants (Brief, page 8) Hatlelid "has behavioral movements for **gesture ids**, but not commands for **actual physical gesture**." Further, appellants assert (Brief, page 8) that neither reference accesses a table or a mapping to obtain an action associated with the determined state of the actual physical gesture.

Again, we agree with appellants. As indicated *supra*, Kellner transmits data, not commands. In addition, Hatlelid discloses generating a physical gesture in response to words entered by the user. Hatlelid does not determine a state of an actual physical gesture, as recited in independent claims 2 and 5. Appellants define "state" in the specification (pages 14, 15, and 20) as the number of times a particular physical gesture has occurred.

While limitations in the specification must not be routinely imported into the claims because a patentee need not describe all embodiments of his invention, *see Rexnord*, 274 F.3d at 1344, a definition of a claim term

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in the specification will prevail over a term's ordinary meaning if the patentee has acted as his own lexicographer and clearly set forth a different definition, *see Tex. Digital Sys.*, 308 F.3d at 1204 (noting that 'the inconsistent dictionary definition must be rejected' if the specification rebuts the presumption of ordinary and customary meaning); *Rexnord*, 274 F.3d at 1342.

3M Innovative Properties Co. v. Avery Dennison Corp., 350 F.3d 1365, 1371, 69 USPQ2d 1050, 1054 (Fed. Cir. 2003). Thus, "state" means the number of occurrences of a particular gesture, and Hatlelid fails to disclose a determination of a gesture's state. Accordingly, we cannot sustain the rejection of claims 2, 5, and 6.

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CONCLUSION

The decision of the examiner rejecting claim 3 under 35 U.S.C. § 102(e) and claims 2, 5, and 6 under 35 U.S.C. § 103 is reversed.

REVERSED

Annie Pellman Gross

ANITA PELLMAN GROSS
Administrative Patent Judge

~~LANCE LEONARD BARRY~~
Administrative Patent Judge

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